

# STATE OF ALASKA

## DEPARTMENT OF LAW

**SARAH PALIN, GOVERNOR**

P.O. Box 110300  
Juneau, Alaska 99811-0300  
Phone: (907) 465-3600  
Fax: (907) 465-2075

May 8, 2009

The Honorable Sarah Palin  
Governor  
State of Alaska  
P.O. Box 110001  
Juneau, Alaska 99811-0001

Re: CCS HB 81 (brf sup maj pfld H) --  
making appropriations for the operating  
and loan program expenses of state  
government, for certain programs, and to  
capitalize funds; making supplemental  
appropriations; making reappropriations;  
making appropriations under art. IX, sec.  
17(c), Constitution of the State of Alaska  
Our file: JU2009200407

Dear Governor Palin:

At the request of your legislative office, we have reviewed CCS HB 81 (brf sup maj pfld H) -- making appropriations for the operating and loan program expenses of state government, for certain programs, and to capitalize funds; making supplemental appropriations; making reappropriations; making appropriations under art. IX, sec. 17(c), Constitution of the State of Alaska. This bill is otherwise known as the fiscal year 2010 operating budget (beginning on July 1, 2009, and ending on June 30, 2010). We review the highlights of the bill below.

### **I. INTRODUCTION**

This budget, as well as the budgets for the last few years, has set out the following introductory language in sec. 1: "[a] department-wide, agency-wide, or branch-wide unallocated reduction set out in this section may be allocated among the appropriations made in this section to that department, agency, or branch." Section 1, p. 2, lines 4 - 6; see also sec. 2, p. 46, lines 8 - 11.

We note only one unallocated reductions in this bill: a \$400,000 system-wide unallocated reduction for the University of Alaska, sec. 1, p. 42, lines 25 - 27. As we have previously stated, unallocated reductions that purport to affect more than one

appropriation may raise constitutional questions. *See* 2006 Op. Att'y Gen. 1 (June 16; 883-06-0104); 2005 Op. Att'y Gen. (June 22; 883-05-0102). We typically do not recommend a veto of such reductions. *Id.*

## II. GENERAL INTENT LANGUAGE

As in prior years, the bill has numerous expressions of legislative intent accompanying certain appropriation items. *See, e.g.*, sec. 1, p. 2, lines 27 - 28; p. 5, lines 28 - 30; p. 10, lines 27 - 29. The issue with respect to intent language concerns the extent to which such language violates the confinement clause of the Alaska Constitution ("[b]ills for appropriations shall be confined to appropriations." art. II, sec. 13). In *Alaska State Legislature v. Hammond*, Judge (now Justice) Carpeneti adopted a five-factor test to determine whether such language violates the confinement clause:

[T]he qualifying language must be the minimum necessary to explain the Legislature's intent regarding how the money appropriated is to be spent. It must not administer the program of expenditures. It must not enact law or amend existing law. It must not extend beyond the life of the appropriation. Finally, the language must be germane, that is, appropriate, to an appropriations bill.

Memorandum of Decision at 44 - 45, No. 1JU-80-1163 (Alaska Super., May 25, 1983). Judge Carpeneti observed that this test could not "easily or mechanistically be applied" and that every section of challenged intent language "is a new case which must be examined separately." *Id.* at 45. The Alaska Supreme Court subsequently adopted Judge Carpeneti's test on a "non-exclusive" basis in the *Knowles II* decision. *Alaska Legislative Council v. Knowles*, 21 P.3d 367, 377 (Alaska 2001).

The courts have had relatively few opportunities to consider whether certain instances of intent language violate the confinement clause. Judge Carpeneti determined that most (but not all) of the intent language at issue in *Hammond* was invalid under the confinement clause. *Hammond*, No. 1JU-80-1163 at 46-58. In *Knowles II*, the Court found certain contingency language invalid (21 P.3d at 379-81), and certain descriptive language non-binding (*Id.* at 383), but upheld the following language:

This appropriation is for new CRC beds, not owned or controlled by municipalities, to provide space in institutions for violent felons. All beds will meet department standards for Community residential Centers. Contracts will be competitively bid.

*Id.* at 381 - 82. The Court found that while portions of this language violated some of the *Hammond* factors, these violations were offset by the fact that the language did not amend existing law and it did not extend beyond the life of the appropriation. *Id.* Accordingly, we think it is possible to craft intent language that is permissible under the confinement clause. In our experience, however, most uses of intent language in the budget violate the confinement clause. Nevertheless, we cannot rule out the possibility that some uses of intent language could be found by a court to be enforceable.

In the past, we have advised that expressions of intent may generally be ignored or followed as a matter of comity. We continue to offer this advice, however, in the event your office or a recipient agency is disinclined to follow intent language as a matter of comity, and we have not specifically addressed such language herein, we recommend further consultation with this office so that we may advise as to the extent such language may be enforceable under the *Hammond* factors.

Finally, as we advised in our reviews of intent language in previous appropriations bills, an expression of legislative intent may no longer be vetoed by the governor as a line item veto separate from the appropriation itself. In *Knowles II*, the Alaska Supreme Court ruled that expressions of intent do not constitute "items" subject to your veto power under art. II, sec. 15, of the Alaska Constitution. *Id.* at 377.

### **III. DEPARTMENT OF ADMINISTRATION**

The line item for the State Travel Office expresses the legislature's intent that "all out of state travel by state employees be conducted on a mileage ticket where possible." Section 1, p. 2, lines 27 - 28. The language does not state whether the mileage to be used is state mileage or employee mileage. In our view, use of state mileage for out of state travel is probably a wise use of state mileage. Use of mileage from an employee's personal mileage account, however, would probably require a statutory change.

### **IV. DEPARTMENT OF CORRECTIONS**

The legislature has expressed its intent that the Department of Corrections "define its future facility needs, including alternatives to prison space, with specific attention to the communities of Bethel, Seward and Fairbanks, and report their findings to the legislature before February 1, 2010." Section 1, p. 9, lines 4 - 7. Additionally, the legislature requests, via intent language, for a report on the issue of privatizing the operation and maintenance of the Goose Creek Correctional Center. We have previously advised that reporting requirements are normally set out in statute. 2007 Op. Att'y Gen 2 (June 6; 883-07-0070). The Department of Corrections may wish to comply as a matter of comity.

The legislature has expressed its intent that "no state funds, other than the amount required to reimburse the Matanuska-Susitna Borough for debt service costs, be used for capital costs associated with the Goose Creek Correctional Center." This intent language appears to be more or less consistent with the financing for the Goose Creek Correctional Center authorized in ch. 160, SLA 2004 (SB 65) (authorizing the Department of Corrections to enter into a lease-purchase agreement with the Matanuska-Susitna Borough to enable the construction of a new correctional facility).

## **V. DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT**

As it did last year, the legislature has stated that a school district may not receive state education aid if it has a policy barring military, ROTC, CIA, and FBI recruiters, the boy scouts, or ROTC programs from its schools. Section 1, p. 11, lines 19 - 28. As we concluded last year, we think this language probably violates the confinement clause. *See* 2008 Op. Att'y Gen. 3 (May 9; 883-08-0074).

In *Knowles II*, the legislature sought to make certain appropriations to the Alaska Seafood Marketing Institute (ASMI) contingent on ASMI not having any employees located outside the state with a salary over a certain level. The Alaska Supreme Court held that such conditional language violated four of the five Hammond factors (discussed in the margin above) in that the language (i) went beyond the minimum necessary language because it did not describe how the appropriated money was to be spent, (ii) sought to administer the agency's program, (iii) was not germane to the appropriations, and (iv) was substantive in nature. *Knowles II*, 21 P.3d at 380-81.

For similar reasons, we think the military recruiter language in the Department of Education and Early Development's budget violates the confinement clause. It is not the minimum necessary language because it does not describe how the appropriation is to be spent. It seeks to administer the agency's program by requiring that certain policies be adopted. The military recruiter language is not germane to the foundation program appropriation. By requiring certain military recruiter policies on school districts, it resembles substantive law.

We recognize that in some cases, courts have upheld language conditioning an appropriation. *Knowles II*, 21 P.3d at 379. But there needs to be a substantial nexus between the condition and the appropriation -- this appears to be the purpose of the "germaneness" requirement. Here there is little expressed nexus between a military recruiter access policy and the foundation formula.

Accordingly, we believe this language is unenforceable. The legislature may seek to pass a substantive bill that requires schools to provide recruiter access.

## **VI. DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Under the water quality line item, the legislature has expressed its intent that the Department of Environmental Conservation "conduct an audit of Crowley Marine Services pertaining to the contract provisions requiring an Alaskan hiring preference under the Ocean Ranger program." Section 1, p. 14, lines 17 - 19. This language appears to violate at least two of the *Hammond* factors: it seeks to administer a program or expenditures and does not seem particularly germane to the appropriation. We think this language is unenforceable, but the Department of Environmental Conservation may comply with this language as a matter of comity.

## **VII. DEPARTMENT OF FISH AND GAME**

Under the Fish and Game Boards and Advisory Committees line item, the legislature has expressed its intent that the Board of Fisheries when it is considering a topic relating to certain regional areas, that it hold its meeting in that regional area. Section 1, p. 15, line 30 - p. 16, line 8. Such a requirement should be imposed by statute.

## **VIII. DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

There are several items in the Department of Health and Social Services (DHSS) portions of the budget that warrant mention. We discuss each in this section.

### **A. Abortion Funding**

This year's budget, as did the past several years' budgets, contains the following language regarding abortion funding:

No money appropriated in this appropriation may be expended for an abortion that is not a mandatory service required under AS 47.07.030(a). The money appropriated for Health and Social Services may be expended only for mandatory services required under Title XIX of the Social Security Act and for optional services offered by the state under the state plan for medical assistance that has been approved by the United States Department of Health and Human Services.

Section 1, p. 17, lines 20 - 25. As we opined before, this language is intended to prevent expenditures from these appropriations for therapeutic or medically necessary abortions. DHSS, however, is under a superior court order to operate its Medicaid program in a constitutional manner by providing payment for them. That superior court order has been upheld by the Alaska Supreme Court, which specifically rejected an argument that the separation-of-powers doctrine precluded the superior court from ordering the state to pay.

*State, Dept. of Health & Social Services v. Planned Parenthood of Alaska*, 28 P.3d 904 (Alaska 2001). Thus, the DHSS is faced with a ruling from the state's highest court that the limit on payment for abortion services results in the operation of the Medicaid program in an unconstitutional manner, while DHSS is ostensibly without the money available to pay for services to operate the program legally. A veto of this provision is not available under as described in our analysis of *Knowles II*.

Seven years ago, the plaintiffs in the Planned Parenthood case asked the superior court to clarify how similar budget restrictions impacted its judgment. The superior court, three days after the Supreme Court affirmed the judgment, issued an opinion ordering the DHSS not to comply with the restrictions. To date, therefore, DHSS has obeyed the superior court's order and we must advise DHSS to continue to obey it; *i.e.*, to continue to pay for these medically necessary abortions, until such time as a court reverses the order that is now in effect.

## **B. Grant Programs**

The legislature has added intent language requesting that DHSS eliminate report requirements for grant recipients whose grants are \$50,000 or less. Section 1, p. 18, lines 9 - 12. The language goes on to provide direction regarding grant procedures. *Id.* at lines 13 - 23; *see also id.* at p. 19, line 31 - p. 20, line 9. This intent language strays into the administration of these grant programs, and accordingly we think violates the confinement clause. We also note that this intent language is internally inconsistent in that it requests that some reporting be terminated, but then requests that future grants be awarded on past performance, which might be difficult to comply with if there was no report on which to judge past performance.

## **C. Pioneer Homes**

The bill contains the same intent language from previous years regarding an appropriation to the DHSS, Alaska Pioneers' Homes, which arguably goes beyond an expression of intent. The language appears to make changes to program requirements through an appropriation bill:

It is the intent of the legislature that all pioneers' homes and veterans' homes applicants shall complete any forms to determine eligibility for supplemental program funding, such as Medicaid, Medicare, SSI, and other benefits as part of the application process. If an applicant is not able to complete the forms him/herself, or if relatives or guardians of the applicant are not able to complete the forms, Department of Health and Social Services staff may complete the forms for him/her, obtain the individuals' or designee's signature and submit for eligibility per AS 47.25.120.

Section 1, p. 19, lines 8 - 17. The expression of intent that pioneers' home and veterans' home applicants complete forms to determine eligibility for supplemental program funding must be accomplished by statute or, if appropriate, regulations. Thus, we think there are confinement clause concerns with this language.

#### **D. Fiscal Audit Directives**

The legislature has set out intent language related to fiscal audits required in ch. 66, SLA 2003 of Medicaid providers. Section 1, p. 25, lines 19 - 33. The intent language requests that the DHSS develop certain regulations and training standards. This would effectively result in a retroactive application of any new regulations if the DHSS did not, under its existing authority in AS 47.05 and AS 47.07, have those regulations in effect by that date. The retroactive application of any new regulations likely would conflict with the Administrative Procedure Act's limitations on retroactive effect. *See* AS 44.62.240. Also, under AS 44.62.180, a regulation is effective 30 days after filing by the lieutenant governor, unless "otherwise specifically provided "by the statute under which the regulation . . . is adopted." A statement of intent in an appropriations bill would be doubtful authority for a retroactive application of any new regulation. The appropriate place for this language is in a substantive law bill amending the original fiscal audit legislation.

#### **IX. DEPARTMENT OF PUBLIC SAFETY**

The legislature has expressed its intent that the Department of Public Safety "provide additional state trooper coverage for international border communities to help meet Federal and Homeland Security requirements." Section 1, p. 35, lines 3 - 5. We think this language strays into the administration of the Department of Public Safety's program with respect to how it deploys its personnel. But if such additional coverage is consistent with the Department of Public Safety's mission, the Department of Public Safety may comply as a matter of comity.

With respect to the Council on Domestic Violence and Sexual Assault (CDVSA) appropriation, the legislature provides as follows:

Notwithstanding AS 43.23.028(b)(2), up to 10% of the amount appropriated by this appropriation under AS 43.23.028(b)(2) to the Council on Domestic Violence and Sexual Assault may be used to fund operations and grant administration.

Section 1, p. 36, lines 13 - 17. Under AS 43.23.028(a)(3), the commissioner of revenue is required to disclose to the public the amount by which each permanent fund dividend has been reduced as a result of appropriations from the dividend fund. However, money appropriated from the dividend fund to specified corrections and crime victims programs

is not subject to the disclosure requirement, to the extent the amount appropriated from the fund to all the programs is less than the dividends that would have been paid to criminals who are ineligible under AS 43.23.005(d). Under AS 43.23.028(b)(2), appropriations from the dividend fund to the CDVSA "for grants for the operation of domestic violence and sexual assault programs" are among the appropriations that need not be included in the disclosure under AS 43.23.028(a)(3).

The exemption from disclosure under AS 43.23.028(b)(2) is limited to appropriations "for grants for the operation of domestic violence and sexual assault programs." To the extent that the "notwithstanding" language in the bill is intended to allow the CDVSA to use up to 10 percent of its appropriation from the dividend fund for the CDVSA's operations and grant administration, without affecting the appropriation's exemption from the disclosure requirement, this should be accomplished by a substantive amendment to AS 43.23.028(b)(2), not by language in an appropriation bill. Therefore, this provision is ineffective to alter the limitations on the exemption from the statutory disclosure requirement for appropriations to the CDVSA. If this is not the legislature's intent, it seems to us that the legislature could simply drop the "notwithstanding" language in the future -- there is nothing in AS 43.23.028(b)(2) that limits the legislature's authority to appropriate for fund operations and grant administration.

## **X. DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES**

As we have noted in previous years, there is a special lapse provision in the Department of Transportation and Public Facilities budget: "The amounts allocated for highways and aviation shall lapse into the general fund on August 31, 2010." Section 1, p. 41, lines 10 - 11. This special lapse provision makes the appropriations available for expenditure until they lapse into the general fund on August 31, 2010.

Under the Marine Highway System line item, the legislature has expressed its intent that the Alaska Marine Highway System fund be segregated into two accounts: (1) a system revenue account, and (2) a fund capitalization account. The legislature further expresses its intent that system revenue be spent prior to fund capitalization, and that fund capitalization be spent only after review by the Legislative Budget and Audit Committee. Section 1, p. 42, lines 5 - 12. Typically, accounts and subaccounts are created in law. Accordingly, the legislature should pass a bill with these accounting requirements. Moreover, the imposition of a review before the expenditure of appropriated funds seems unusual and perhaps calculated to enable the Legislative Budget and Audit Committee to administer the expenditure. The Department of Transportation and Public Facilities may comply as a matter of comity if it wishes.



## **XI. UNIVERSITY OF ALASKA**

Under the unallocated budget reduction line item, the legislature has expressed its intent that the University of Alaska "consider forgoing Executive position pay raises in light of the current fiscal situation." Section 1, p. 42, lines 28 - 29. This intent language is not directory, and the University of Alaska may comply as a matter of comity if it wishes.

## **XII. NEW LEGISLATION**

Section 2 of the bill sets out the appropriations for several pieces of new legislation. If the legislation should fail to pass, then the appropriation lapses. We note that HB 20 and HB 161 failed to pass.

## **XIII. LANGUAGE SECTIONS**

Section 5(a) of the bill sets out legislative intent that the amounts appropriated in the operating budget are the full amounts to be appropriated for the identified purpose. Section 5(b) of the bill sets out legislative intent requesting that money from the general fund be expended "conservatively" and that where an appropriation is funded by both program receipts and the general fund, that program receipts be expended first.

With respect to the conservative expenditure of general fund dollars, an appropriation is authorization to spend up to that amount -- but expenditures may only be made if the agency recipient has determined that the expenditure is appropriate and within the scope of the appropriation. With respect to the order of expenditure of funds, this intent language seems reasonable -- program receipts in the form of agency fees may not exceed the actual operating costs of the agency. AS 37.10.050. In other words, program receipts are intended to defray the operating costs of agencies -- not saved and used as a budgetary cushion. Nevertheless, this expression of intent seeks to enact law with respect to how agency funds are to be accounted and spent. While reasonable, it belongs in statute, and therefore we think it violates the *Hammond* factors.

Section 6 of the bill states that funds appropriated in the operating budget include any amounts necessary to pay for job reclassifications.

Section 7 of the bill sets out intent language that "agencies restrict transfers to and from the personal services line." Moreover, the legislature requests that office of management and budget submit two reports with respect to such transfers during fiscal year 2010. The legislature has authorized transfers between allocations in AS 37.07.080(e). Thus, this intent language seeks to amend existing law and therefore violates the *Hammond* factors. Moreover, it contains a reporting requirement, which as we have elsewhere noted, is normally set out in statute.

Section 8 of the bill would appropriate to the Alaska Aerospace Development Corporation all federal receipts in excess of the amounts appropriated in sec. 1.

Section 9 of the bill would appropriate from the earnings reserve account of the permanent fund the amount necessary to pay for permanent fund dividends and to inflation-proof the permanent fund. This section would also appropriate oil and gas revenue to the principal of the permanent fund as required by the constitution and statute. The section that appropriates the income from the Amerada Hess monies in the permanent fund to the Alaska capital income fund has been moved to the capital budget.

Section 10 of the bill would appropriate from the state insurance catastrophe reserve account to the Department of Administration amounts necessary to fund the uses set out in AS 37.05.289(a).

Section 11(a) of the bill would appropriate national forest income that will lapse at the end of FY 2010 to the Department of Transportation and Public Facilities and to political subdivisions. Section 11(b) and (c) of the bill would make the usual appropriations related to the salmon enhancement and seafood development taxes to qualified regional associations and qualified regional seafood development associations, respectively. Section 11(d) and (e) of the bill would provide for power cost equalization appropriations. Section 11(f) of the bill would appropriate from federal receipts for national forest receipt payments. Section 11(g) of the bill would appropriate from federal receipts for payment in lieu of taxes allocation.

Sections 12 - 16 of the bill would make various appropriations to the Departments of Labor and Workforce Development, Military and Veteran's Affairs, Natural Resources, Public Safety, and Revenue.

Section 17 of the bill would appropriate certain amounts to the office of the governor for distribution to agencies for relief from high energy costs. The amounts of the appropriations are tied to the price of oil and decrease as the price of oil declines. This section also sets out a methodology for allocating the appropriation between agencies.

Section 18 of the bill would appropriate certain license plate fees to the University of Alaska.

Section 19 of the bill would appropriate proceeds, if any, from claim settlements against reclamation bonds for the purpose of reclaiming land covered by the bond.

Section 20 of the bill would appropriate federal and other program receipts.

Section 21 of the bill would make several fund transfers. We note that sec. 21(c)

provides for an appropriation from the general fund to cover any shortfall in the oil and gas tax credit fund should the balance of that fund be insufficient to purchase tax credit certificates.

Section 22 of the bill would appropriate retained fees and bankcard service fees. This provision now explicitly covers contingency fees.

Section 23 of the bill would make an appropriation in the amount of \$173,462,000 for the state's additional contribution under AS 14.25.085 to pay teachers' retirement system unfunded liability, and in the amount of \$107,953,000 for the state's additional contribution under AS 39.35.255 to pay public employees' retirement system unfunded liability. Section 23 would also make an appropriation of \$1,722,500 to the Department of Military and Veterans' Affairs for the Alaska National Guard and Naval Militia retirement system.

Section 24 of the bill would appropriate a sum for benefit adjustments for officials and employees of the executive, judicial, and legislative branches and to implement the terms of certain collective bargaining agreements. HB 417 (ch. 21, SLA 2008) was enacted into law and contained increases of 3 percent for certain employees not covered by collective bargaining agreements to be effective July 1, 2009. AS 39.27.011(f). This section would provide the funding for those increases.

Additionally, HB 417 created the State Officers Compensation Commission (commission) for the principal purpose of reviewing and making recommendations regarding the salaries, benefits, and allowances for the members of the legislature, the governor, the lieutenant governor and executive department heads. AS 39.23.500; AS 39.23.540 (a). The commission was required to submit a final report making recommendations regarding the compensation for these officials to the legislature and the governor during the first 10 days of the legislative session. AS 39.23.540(d). The commission timely submitted its report and made recommendations for compensation increases for legislators and department heads; it did not recommend any changes in salary for the governor or the lieutenant governor. Under AS 39.23.540 (d), the report's recommendations become effective unless a bill disapproving the recommendations for all officers was enacted into law within 60 days after the commission's recommendations were submitted, contingent on appropriations for the salaries and benefits for these officials. There were three bills introduced (HB 158, HB 159, and SB 106) that would have disapproved the recommendations but none of the bills were enacted into law. Thus, the commission's recommendations become effective so long as there are appropriations for these officials' compensation. This section provides that the appropriations in sec. 1 of the bill include funds for compensation for the officials for whom the commission submitted recommendations: legislators and executive branch department heads. Accordingly, the commission's recommendations become effective unless any of the appropriations under this section for the labor costs and benefit

adjustments for legislators and executive department heads are vetoed by the governor. AS 39.23.540(g).

Section 24(a) of the bill would also appropriate funds to implement state collective bargaining agreements covering the following bargaining units: APEA for the confidential unit; ASEA for the general government unit; APEA for the supervisory unit; Alaska Vocational Technical Teachers Association-NEA for the Alaska Vocational Technical Center unit; Public Safety Employees Association for the regularly commissioned public safety officers unit; Inland boatmen's Union of the Pacific for the unlicensed marine bargaining unit; International Organization of Masters, Mates and Pilots for the masters, mates and pilots unit; Public Employees Local 71 for the Labor, Trades and Crafts unit; and Marine Engineers Beneficial Association for the marine engineers unit. The section does not include an appropriation for the Teachers' Education Association of Mt. Edgecumbe bargaining unit; it is our understanding that there has been no agreement reached for that bargaining unit.

Regarding the Alaska Correctional Officers Association for the correctional officers bargaining unit, on March 19, 2009 an interest arbitration award was issued for the Alaska Correctional Officers Association bargaining unit. Under AS 23.40.215(b), the monetary terms of that interest arbitration award were submitted to the legislature by letter and memorandum to the speaker of the House and the president of the Senate dated March 29, 2009. Additionally, the office of management and budget submitted to the co-chairmen of the House and Senate Finance Committees a proposed amendment to the operating budget bill to fund the monetary terms of the award on April 3, 2009, but the amendment was not adopted in this or any other appropriations bill. A second amendment was submitted by the office of management and budget on April 13, 2009 to fund the award with contingency for resolution of any dispute or legal action regarding the interest arbitration award or the parties' agreement to modify any portion of the award. That amendment was also not adopted in this or any other appropriations bill. As a result, the legislature did not fund the ACOA interest arbitration award. Because the monetary terms of any agreement or interest arbitration award are subject to funding through legislative appropriation, the monetary terms of the ACOA interest arbitration are not effective. AS 23.40.215; *University of Alaska Classified Employees Association, APEA/AFT, AFL-CIO v. University of Alaska*, 988 P.2d 105 (Alaska 1999). The state's collective bargaining agreement with the ACOA provides that in the event the legislature does not fund the monetary terms of an agreement, the parties shall reenter negotiations although the nonmonetary terms of the agreement do become effective.

Section 24(b) of the bill would provide that the appropriations made to the University of Alaska include amounts for salary and benefit adjustments for the fiscal year for employees not members of bargaining units and to implement the monetary terms of employees covered by collective bargaining agreements (including the health plan) for employees in the following unions: Alaska Higher Education Crafts and Trades

Employees; University of Alaska Federation of Teachers; United Academics; and United Academics-Adjuncts.

Section 24(c) of the bill would provide that the appropriations for employees covered by collective bargaining agreements described in subsecs. (a) and (b) of the bill would suffer a corresponding reduction if the collective bargaining agreements are not ratified by the membership of these collective bargaining units. This contingent language is a proper condition on the appropriation.

Section 24(d) of the bill would provide that the appropriations made in sec. 1 of the bill are intended to fully fund the compensation and benefits of an executive department head under AS 39.23.540(g). This is consistent with AS 39.23.540(g) that requires that recommendations regarding the compensation and benefits of public officers included in the report issued by the State Officers Compensation Commission be fully funded in order to be effective. As set out above, sec. 24(a) of the bill would provide that the appropriations in sec. 1 include amounts for salary and benefit adjustments for other officials covered by the recommendations of the commission, including legislators, the governor, and the lieutenant governor. If all the appropriations for the public officers subject to the commission's report are fully funded, the commission's recommendations become effective.

Section 25 of the bill would appropriate the proceeds of certain taxes and fees for refund to local governments. Section 26(d) of the bill sets out intent language to the effect that refunds to local governments may be assigned to another state agency. The Department of Revenue has recently encountered instances when a political subdivision has assigned the right to receive such shared taxes to a state agency, usually as a means to pay an existing obligation. This intent language seeks to enact substantive law and should be set out in statute.

Section 26 of the bill would appropriate amounts necessary for debt service on a range of bonds.

Section 27(a) of the bill is the constitutional budget reserve (CBR) "reverse sweep" provision. Deposits in the CBR for FY 2009 that were made from subfunds and accounts other than the operating general fund to repay appropriations from the CBR are appropriated from the budget reserve fund to the subfunds and accounts from which they were transferred. This subsection passed with the requisite super-majority vote required by art. IX, sec. 17(c) of the Alaska Constitution.

Section 27(b) of the bill would appropriate to the CBR the unrestricted interest earned on investment of the general fund balances for FY 2009. This amount is intended to compensate the CBR for any use by the general fund of CBR monies for cash flow purposes during the fiscal year.

Section 27(c) of the bill would appropriate \$1,673,000 from the CBR for management costs of the CBR. This section also passed by the requisite super-majority vote.

Section 28 of the bill sets out those sections of the bill for which the appropriations do not lapse as they are for capitalization of funds.

Section 29 of the bill would allow for retroactive effect to June 30, 2009, for certain appropriations made in sec. 1 of the bill.

Sections 30 - 31 of the bill set out the effective dates of the various sections of the bill.

#### **XIV. CONCLUSION**

Although we have identified no other constitutional or legal issues in this bill, please be advised that it is not always possible to identify or comment on all legal issues in a bill of this complexity. However, we will assist the agencies throughout the year in interpreting and applying the provisions of this bill, as well as related legislation, to make certain that appropriations are implemented in a manner that is consistent with enabling statutes and valid legislative intent.

Sincerely,

Richard A. Svobodny  
Acting Attorney General

RAS:MAB:ajh